

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 05-CV-11832-GAO

RONNIE JONES, RICHARD BECKERS,)
WALTER R. WASHINGTON, WILLIAM)
E. BRIDGEFORTH, SHAWN N. HARRIS,)
EUGENE WADE, GEORGE)
C. DOWNING, JR., CLARARISE)
BRISTOW, and the MASSACHUSETTS)
ASSOCIATION OF MINORITY LAW)
ENFORCEMENT OFFICERS,)
)
Plaintiffs)
vs.)
)
CITY OF BOSTON, BOSTON POLICE)
DEPARTMENT, and KATHLEEN)
O'TOOLE, as she is Police Commissioner)
for the Boston Police Department,)
)
Defendants)

**DEFENDANTS' DAUBERT MOTION TO PRECLUDE ALL TESTIMONY OF
SHARON KELLY, Ph.D.**

The City of Boston, Boston Police Department and Kathleen O'Toole (collectively "Defendants") hereby submit this *Daubert* Motion to Preclude All Testimony of Sharon Kelly, Ph.D. ("Dr. Kelly"). As grounds for this motion, Defendants assert that Dr. Kelly's testimony does not meet the requirements of admissible expert testimony under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) due to her admitted reliance upon a faulty assumption in her analysis, as well as for her failure to consider practical significance – an essential element of disparate impact statistical analyses. Dr. Kelly's testimony should also be excluded because it has no probative value and would not assist a jury in determining any fact in issue. *See* Federal Rules of Evidence 402, 702. In the alternative, the prejudicial effect of Dr.

Kelly's testimony outweighs any probative value it may have. *See* Federal Rule of Evidence 403.

For these reasons as set forth more fully in Defendant's Memorandum in Support, the Defendants respectfully request that this Court grant their Motion to Preclude All Testimony of Dr. Kelly in its entirety.

Respectfully submitted,

Defendants City of Boston,
Boston Police Department, and
Kathleen O'Toole
By their attorneys,

/s/ Sean P. O'Connor
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Dated: August 28, 2009

CERTIFICATE OF SERVICE

I, Sean P. O'Connor, hereby certify that this document was filed through the ECF system on August 28, 2009, and that a true paper copy of this document will be sent to those indicated as non registered participants on the Notice of Electronic Filing by first class mail on the same date.

DATED: August 28, 2009

/s/ Sean P. O'Connor

Certification of Compliance With Local Rule 7.1(A)(2)

The above-signed hereby certifies that plaintiffs' counsel was conferred in a good faith attempt to narrow the issues presented in this motion.